

Judge Marc L. Barreca  
Chapter 7  
Hearing Location: Marysville, WA  
Hearing Date: July 12, 2017  
Hearing Time: 10:00 a.m.  
Response Date: July 5, 2017

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

In re: ) Case No. 12-11140 MLB  
) Chapter 7  
KENT DOUGLAS POWELL and )  
HEIDI POWELL, ) **TRUSTEE’S REPLY TO DEBTORS’**  
) **SUPPLEMENTAL RESPONSE**  
Debtors. )  
)  
)  
)

In an effort to prevent Trustee from selling the domain name <https://www.heidipowell.com> and the related contract rights, Debtors have recently asserted that 11 U.S.C. §365(c)(1)(A) bars the sale.

First of all, Debtors don’t even quote the statutory text:

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if ---

(1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(B) such party does not consent to such assumption or assignment.

Secondly, since Debtors are trying to use Section 365(c)(1) as a defense, it is their burden to prove its applicability, but Debtors do no such thing, only mentioning the statutory provision “for the Court’s consideration,” and nothing more.

**TRUSTEE’S REPLY TO DEBTORS’  
SUPPLEMENTAL RESPONSE - 1**

Dennis Lee Burman, Attorney at Law  
1103 Ninth Street  
P.O. Box 1620  
Marysville, WA 98270  
Phone (360) 657-3332  
Fax (360) 657-3522

1 Third, Trustee reads the section, even if applicable, as dealing with the consent of “a party,  
2 other than the debtor.” Thus, the Response Declaration of Heidi Powell, dated June 7, 2017,  
3 which, in large part, is a declaration of no consent by her, is irrelevant. Instead it is her burden,  
4 which she has not met, to show that GoDaddy.com, LLC, will not consent.  
5

6 Fourth, Section 365(c)(1), is material only when “**applicable law** excuses a party, other  
7 than the debtor, to such contract or lease from accepting performance from or rendering  
8 performance to an entity other than the debtor or the debtor in possession.” (emphasis added)  
9 Again, Debtors have not met their burden because they cite to no statute whatsoever.  
10

11 Moreover, Trustee has already noted in his Trustee’s Reply to Debtors’ Objection to Sale  
12 of Domain Name and Related Contract Rights that there are statutes that allow an  
13 assignment/transfer, e.g., “the Lanham Act specifically has provisions that allow a party to  
14 obtain a domain name involuntarily where the domain name infringes its trademark – called the  
15 Anticybersquatting Consumer Protection Act (ACPA), 15 U.S.C. 1114(2)(D), et seq.”  
16

17 For any and all of these reasons, 11 U.S.C. §365(c)(1)(A) is not a basis for denying the sale  
18 of the domain name and the associated contract rights.

19 DATED: July 3, 2017

20 /s/ Dennis Lee Burman

21 \_\_\_\_\_  
22 DENNIS LEE BURMAN, WSBA #7875  
23 Trustee in bankruptcy  
24  
25  
26